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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,188	09/29/2003	David A. Selby	RSW920030014US1	2671

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EXAMINER	
LASTRA, DANIEL	
ART UNIT	PAPER NUMBER
3688	

MAIL DATE	DELIVERY MODE
04/03/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/674,188	SELBY, DAVID A.	
	Examiner	Art Unit	
	DANIEL LASTRA	3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 December 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-22 have been examined. Application 10/674,188 (INCENTIVE-BASED WEBSITE ARCHITECTURE) has a filing date 09/29/2003.

Response to Amendment

2. In response to Non Final Rejection filed 09/09/2008, the Applicant filed an Amendment on 12/09/2008, which amended claims 1, 8, 9 and 16.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such as a particular apparatus) (see at least Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least Gottschalk v. Benson, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here the claims fail to meet the above requirements because the steps are neither tied to another statutory

class of invention (such as a particular apparatus). The Applicant needs to include structure in the embodiment of the claims and not only in the preamble.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niu (US 2002/0062245) in view of Herz (US 2001/0014868).

Claims 1, 9 and 16, Niu teaches:

A method of influencing the actions of users of an interactive content- delivery system, comprising the steps of:

identifying probabilities of selection with respect to all selections offered by said interactive content-delivery system (see paragraphs 77-81, 89);

and

presenting users of said interactive content-delivery system with incentives based upon said probabilities (see paragraphs 77-82; 89, 97,115).

Nui does not expressly teach:

And designating certain of said selections as low probability selections based on the identified probabilities, whereby said low probability selections receive higher-value incentives than selections having higher probability of selection than said low probability selections. However, Herz teaches that it is old and well known in the promotion art to

offer customers bigger discounts or offers when said customers have a lower probability of accepting said offers (see paragraph 303). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Nui would offer customers bigger discounts or offers when said customers have a lower probability of accepting said offers, as taught by Herz in order to increase the probability that said customers respond to said offers and become loyal customers.

Claims 2, 10 and 17, Niu teaches:

wherein said identifying step includes at least the step of: estimating probabilities of selection for each possible selection offered by said interactive content delivery system if historical user data for said interactive content delivery system is unavailable (see paragraph 41).

Claims 3, 11 and 18, Niu teaches:

wherein said identifying step further comprises at least the step of analyzing historical user data for said interactive content delivery system to identify probability of selection based on said historical user data (see paragraph 42).

Claims 4, 12 and 19, Niu teaches:

wherein said step of analyzing historical user data comprises at least the step of performing historical analysis of paths taken by users who have not been presented with incentives (see paragraph 43).

Claims 5, 13 and 20, Niu teaches:

wherein said step of analyzing historical user data is continually updated with new historical user data obtained after users of said interactive content-delivery system have been presented with incentives (see paragraph 49).

Claims 6, 14 and 21, Niu teaches:

wherein said incentives are selected based on gaming theory and include both positive and negative incentives (see paragraph 115 "offering a searcher a discount as an incentive to buy and don't offer a buyer a discount as said buyer does not need an additional incentive to buy")

Claims 7, 15 and 22, Niu teaches:

wherein said interactive content-delivery system comprises a web-based e-commerce site (see paragraph 41).

Claim 8, Niu teaches:

A method of managing website visitors, comprising the steps of:

receiving a content selection from a website user (see paragraph 41);

analyzing said content selection and determining probabilities associated with the selection of all sub-choices presented to said user based on said content selection (see paragraphs 41, 97);

presenting incentives associated with each sub-choice based upon said probabilities (see paragraph 89); and

repeating the above steps until a desired end choice has been selected (see paragraph 115 "don't offer a buyer an incentive as said buyer does not need an incentive to buy").

Response to Arguments

5. The Applicant argues that not offering a buyer a discount as said buyer does not need an incentive to buy is not a negative incentive but at best, according to the Applicant, a “neutral incentive”. The Examiner answers that "not offering a discount” is equivalent to decreasing a target offer to a zero discount and therefore, contrary to Applicant’s argument, said "not offering" can be construed as a "negative incentive".

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James W. Myhre can be reached on (571)272-6722. The official Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DANIEL LASTRA/
Examiner, Art Unit 3688
March 31, 2009